



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

West Side Irrigation District

Old River in San Joaquin County

The State Water Resources Control Board will hold a
Public Hearing on

Proposed Partial Revocation of License 1381 (Application 301)

The **Public Hearing**
will commence on
Monday, January 11, 2010,
no earlier than 1:00 p.m.

following the Public Hearing to consider
the Hidden Lakes Estates Homeowners Association's
alleged Waste and Unreasonable Use of Water

in the
Sierra Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or board) to receive evidence relevant to determining whether License 1381 (Application 301) held by West Side Irrigation District (Licensee) should be partially revoked.

BACKGROUND

Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to [s]ection 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."

California Environmental Protection Agency

License 1381, which was issued on September 29, 1933, authorizes the direct diversion of water from Old River in San Joaquin County for irrigation purposes. Licensee may divert 82.5 cubic feet per second of water from about April 1st to about October 1st of each season.

On January 25, 2008, the State Water Board's Division of Water Rights (Division) issued a Notice of Proposed Partial Revocation based on facts indicating that the Licensee has ceased to put the full amount of water granted under the license to useful or beneficial purpose and has failed to observe terms and conditions of the license.

A copy of the Notice of Proposed Revocation is enclosed with this notice and is also posted on the Division's project website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/westside_irrigation_district/

By letter dated February 8, 2008, the Licensee requested a hearing on the proposed partial revocation. Licensee asked the State Water Board not to schedule the hearing for at least nine months.

KEY ISSUES

Should License 1381 be partially revoked in accordance with Water Code section 1675? Has the Licensee failed to, or ceased to, put part of the water granted under the license to a useful and beneficial purpose? Has the Licensee failed to observe any of the terms and conditions in License 1381?

HEARING OFFICER AND HEARING TEAM

State Water Board Member Arthur G. Baggett, Jr., will preside as hearing officer over this proceeding. State Water Board staff hearing team members will include Erin Mahaney, Senior Staff Counsel; and Ernest Mona and Jean McCue, Water Resource Control Engineers. The hearing team will assist the hearing officer and other members of the State Water Board throughout this proceeding.

SEPARATION OF FUNCTIONS

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include David Rose, Staff Counsel; and Kathy Mrowka, Senior Water Resource Control Engineer.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with the hearing officer, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If West Side Irrigation District fails to submit a Notice of Intent to Appear by**

the deadline specified in this notice, the State Water Board will deem its request for a hearing regarding the proposed partial revocation to be withdrawn, and the proposed partial revocation may be imposed without further notice.

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of the persons who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties and participants who have indicated their intent to appear, no later than the deadline listed below.

12 Noon, Tuesday, November 24, 2009 Deadline for receipt of Notice of Intent to Appear.

12 Noon, Monday, December 14, 2009 Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

SUBMITTALS TO THE WATER BOARD

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
P.O. Box 2000, Sacramento, CA 95812-2000 (by mail)
1001 I Street, 2nd Floor, Sacramento, CA 95814 (by hand delivery)

Phone: (916) 341-5359
Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov
With Subject of "West Side I.D. Partial Revocation Hearing"

IF YOU HAVE ANY QUESTIONS


During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Senior Staff Counsel Erin Mahaney at (916) 341-5187, or by email to emahaney@waterboards.ca.gov; or Staff Engineer Ernest Mona at (916) 341-5359, or by email to emona@waterboards.ca.gov.

PARKING, ACCESSIBILITY AND SECURITY

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process.

The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

November 2, 2009
Date



Jeanine Townsend
Clerk to the Board

Enclosures

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 1381 (Application 301)
West Side Irrigation District

NOTICE OF PROPOSED PARTIAL REVOCATION

SOURCE: Old River
COUNTY: San Joaquin

You are hereby notified, pursuant to Water Code section 1675 et seq., that the State Water Resources Control Board (State Water Board) is proposing to partially revoke License 1381 because the Licensee has ceased to put the full amount of water granted under the license to a useful or beneficial purpose and has failed to observe terms and conditions in the license.

The facts and information upon which the proposed revocation is based are as follows:

1. The State Water Board issued License 1381 on September 29, 1933. The Division of Water Rights' (Division) records show West Side Irrigation District (Licensee) as the owner of License 1381. The license authorizes the Licensee to divert 82.5 cubic feet per second (cfs) from April 1 to October 31. The authorized purpose of use is irrigation of 11,993.8 acres.
2. On July 18, 1985, the Division conducted a field inspection of the project served by License 1381. Division staff observed that the place of use had been reduced from 11,993.8 acres to 9,413 acres. Division staff recommended that the authorized direct diversion rate be reduced to 64.75 cfs. The field engineer calculated that the maximum monthly diversion should not exceed 4,900 acre-feet (af) (82.5 cfs x 1.98 af/cfs x 30 days = 4,900 af). The reduction in the licensed direct diversion rate was calculated based on a pro-rata reduction in service area.

11,993 acres in license
-2,746 acres no longer irrigated
9,247 acres
+ 166 acres annexed to district
9,413 acres existing.

$9,413 \text{ acres} / 11,993 \text{ acres} \times 82.5 \text{ cfs} = 64.75 \text{ cfs}$.

The license inspection results were provided to the Licensee on October 8, 1986. The Licensee was requested to provide a new engineered map and a petition to change the place of use for the reduced place of use. The Licensee did not provide a revised map.

3. In the Division's April 9, 1992 letter, staff reminded the Licensee of the need for a revised engineered map.
4. The Licensee advised the Division on June 4, 1992 that the Local Agency Formation Commission (LAFCO) had detached lands from the district. The Licensee advised the Division that it was premature to submit a new engineered map because its service area was undergoing change.

5. On July 27, 1992, Division staff advised the Licensee that the Division needs more specific details on its planning effort. The matter of updating the license and maps had been outstanding since 1986, but the Licensee had not yet submitted revised maps.
6. The Licensee informed the Division by letter dated September 21, 1998 that it would not be taking any action to amend the place of use. The Licensee confirmed that the district boundaries have been reduced over time as land is annexed into the City of Tracy for municipal development. The land is routinely detached from the district.
7. On September 19, 2001, the State Clearinghouse circulated an Initial Study and Negative Declaration (ND) for change in purpose of use of License 1381 of West Side Irrigation District. The ND states that the district consists of approximately 6,161 acres.
8. The Licensee's November 21, 2001 letter states that approximately 5,800 acres of land have changed from agricultural to urban uses, and have detached from the district. The district is now comprised of 6,161 acres.
9. During a telephone conversation on April 28, 2004, Jeanne Zolezzi (legal counsel for the Licensee) and Gene Carson (Licensee's representative) advised Division staff that the Licensee uses 3 af/acre, on average.
10. Based on information provided by the Licensee on November 21, 2001 and in the Reports of Licensee, the Licensee has used the following amounts of water in recent years:

YEAR	ACREAGE	AF	AVERAGE CFS
1975	10,560	44,836	105.6
1976	11,780	48,673	114.7
1977	11,014	42,274	99.6
1978	9,416	22,658	53.4
1979	10,283	28,591	67.4
1980	10,198	17,239	40.6
1981	9,761	25,546	60.2
1982	10,041	27,960	65.9
1983	8,779	23,025	54.2
1984	8,774	31,492	74.2
1985	8,679	31,838	75.0
1986	7,477	23,097	54.4
1987	8,280	21,119	49.8
1988	8,679	22,949	54.1
1989	7,871	19,673	46.4
1990	No Data Provided	No Data Provided	No Data Provided
1991	No Data Provided	No Data Provided	No Data Provided
1992	7,500	25,121	59.2
1993	7,500	19,358	45.6
1994	7,500	21,437	50.5
1995	7,500	23,433	55.2
1996	7,500	24,028	56.6

1997	7,500	24,957	58.8
1998	5,676	16,258	38.3
1999	6,207	22,033	51.9
2000	5,954	22,595	53.2
2001	5,555	21,324	No Data Provided
2002	6,049	23,286	No Data Provided
2003	5,360	19,277	No Data Provided
2004	5,088	21,194	No Data Provided
2005	4,774	17,311	No Data Provided
2006	4,498	18,149	No Data Provided

11. On May 28, 2004, the U.S. Bureau of Reclamation advised the Division that it appears that a portion of License 1381 appears to have been abandoned or forfeited through non-use.
12. On August 5, 2004, the Division advised the Licensee that License 1381 may be amended to reflect the maximum recent use of 58.8 cfs, with an annual limit of 24,957 af. This represents the largest quantity of water used during the most recent five years of record (1996 through 2000) provided by the Licensee. The Division requested that the Licensee submit a statement of facts documenting recent use of 85 cfs and the maximum annual use by September 4, 2004. The Licensee did not submit the requested statement of facts.
13. On September 7, 2004, the Licensee informed the Division that it has experienced low water levels in Old River, particularly in the spring months, for several years, which have inhibited its pumping capacity. The Licensee did not identify which years had low water levels.
14. In a May 10, 2005 letter, Division staff restated the information regarding recent use of only 58.8 cfs, with an annual limit of 24,957 af. The May 10 letter documents that the Division did not receive the requested statement of facts showing: (a) use of 85 cfs or (b) a lack of available water, and advised the Licensee that the Division may consider amending the license to limit the use to the documented amounts.
15. The Licensee's July 7, 2005 letter informed the Division that the license can only be reduced through the procedure outlined in Water Code section 1675 et seq. The July 7 letter did not provide the requested statement of facts.
16. The Division's June 20, 2006 letter requested that the Licensee submit its triennial Report of Licensee for 2001, 2002, 2003 by July 20, 2006. The Licensee has not done so.
17. In a July 13, 2006 letter, the Licensee's counsel advised the Division that: "If the State Board wishes to reduce WSID's licensed diversion amount, it must pursue a section 1675 investigation and attempt to obtain a final order revoking a portion of License 1381."
18. Section 1675 of the Water Code provides: "If at any time after a license is issued, the board finds that the licensee has not put the water granted under the license to a useful or beneficial purpose in conformity with this division or that the licensee has ceased to put the water to such useful or beneficial purpose, or that the licensee has failed to observe any of the terms and conditions in the license, the board, after due notice to the licensee and after a hearing, when a hearing is requested by the licensee pursuant to section 1675.1, may revoke the license and declare the water to be subject to appropriation in accordance with this part."

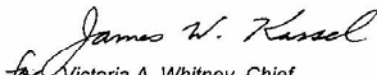
19. Division records show that the maximum quantity of water diverted in the most recent five years for which Licensee has provided records is 58.8 cfs, with an annual limit of 24,957 af.

Based on the above facts, the Division concludes that:

1. Licensee has failed to observe the terms and conditions of License 1381.
2. Licensee has not, or has ceased to, put part of the water granted under License 1381 to a useful or beneficial purpose. The maximum quantity diverted is 58.8 cfs, with an annual limit of 24,957 af.
3. Licensee has not applied part of the water to beneficial use for at least five consecutive years nor shown that water was not available. Licensee's water right should, therefore, be partially revoked pursuant to Water Code section 1675. The unused water should revert to the public and be regarded as unappropriated public water pursuant to Water Code section 1675.

As required by Water Code section 1675.1, you are hereby notified that the State Water Board will partially revoke License 1381, based on the above facts and conclusions, unless a written request for a hearing, signed by or on behalf of the Licensee, is delivered or mailed to the State Water Boards' Division of Water Rights at the address listed on the cover letter within 15 days after receipt of this notice.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JAN 25 2008**

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are West Side Irrigation District and the Prosecution Team for the State Water Board. Other persons or entities wishing to participate as parties may do so only if authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.**

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 or later software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 20 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "West Side I.D. Partial Revocation Hearing." Electronic submittals to the State Water Board of documents greater than 20 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD) media. Each electronically submitted exhibit must be saved as a separate PDF file with the file name in lower case lettering!

Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants to the e-mail address provided on the Notice of Intent. Participants who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/westside_irrigation_district/

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his or her discretion.
 - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to **five minutes** or such other time as established by the hearing officer.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed. Each participant will be allowed up to **one hour** total to present its opening statement and all of its direct testimony.²
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is

² The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. In addition, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

intended to establish, and the relationship between the major points and the key issues. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses should summarize or emphasize their written testimony on direct examination.
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to **one hour** per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments.
7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions

and Answers" is available upon request or from our website at:
http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
(name of party or participant)

Proposed Partial Revocation Hearing

**West Side Irrigation District
Old River in San Joaquin County
License 1381 (Application 301)**

**scheduled to commence
Monday, January 11, 2010**

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail: _____

